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**Negotiating Group on the Multilateral Agreement on Investment (MAI)**

**TECHNOLOGY RESEARCH AND DEVELOPMENT**

**(Note by the Chairman)**

## TECHNOLOGY RESEARCH AND DEVELOPMENT

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1. Technology research and development (R&D) are catalysts for economic growth and important factors behind the competitiveness of firms and nations. Because of their perceived strategic effects, governments promote technology R&D through various policies.

2. These policies are usually designed to develop the technological capabilities of domestic firms, and may discriminate against foreign firms. Discrimination can take various forms including:

- Subsidies or tax advantages for basic or applied research only offered to domestic firms;
- Industry or government/industry consortia open exclusively to national firms;
- Competition policy exemptions for R&D consortia granted only to domestic firms;
- Government procurement, particularly defence contracting, favouring domestic firms;
- Reciprocity or conditional national treatment provisions attached to the granting of subsidies or government procurement and defence contracts, participation in R&D consortia or competition policy exemptions;
- Performance requirements on foreign firms to conduct R&D activities locally, to use that technology in the local production of goods and services or discourage technology transfers abroad;
- Limitations on transfers abroad for licensing revenues and royalties;
- Establishment of technical standards favouring local firms or local products.

3. This discrimination may be motivated by economic or national security considerations. However, national security motivations may mask the pursuit of national economic interests. The question of whether there should be limits on the extent to which national security considerations can serve as legitimate grounds for exceptions to MAI disciplines has been discussed in the Negotiating Group at its October and December meetings.

4. Technology policies can also provide more favourable treatment to foreign firms as compared to domestic firms. Governments may consider that foreign firms have superior technologies than domestic firms or invest more in R&D. This “positive” discrimination may result from the various investment incentives identified in the note DAFPE/MAI(96)5 and may, as result, give rise to the same types of concerns, namely unfair competition, costly competitive bidding between countries and misallocation of investment funds.

## The MAI

5. As technology considerations may play an important role in government policies towards foreign direct investment, it needs to be considered how technology R&D should be covered by MAI disciplines. In fact, most if not all the disciplines that are already contemplated for other MAI subjects would appear to be relevant to technology policy. As in the case of disciplines in existing international agreements (WTO, NAFTA, NTI . . .), it may not be necessary to develop specific MAI provisions on technology R&D. However, it is well worth reviewing the substantive obligations of the MAI with technology R&D in mind to ensure that coverage is adequate in each case.

6. A *broad definition* of investors and their investments [see DAFPE/MAI(96)2] which includes intellectual property rights and licensing agreements would extend the protection of the MAI to the technology that foreign firms may transfer, develop or use in host countries. Obligations of *national treatment and non-discrimination/MFN* [DAFFE/MAI/DG2(95)1/REV1] combined with standstill and roll-back commitments could take care of discriminatory treatment resulting from the allocation of financial assistance and tax breaks for R&D activities, participation in R&D consortia or derogations from competition rules. Disciplines *on key personnel* [DAFFE/MAI(96)3] could facilitate the entry and employment of persons capable of engaging in R&D activities. Disciplines *on performance requirements* [DAFFE/MAI(96)4] could cover R&D. Disciplines *on investment incentives* [DAFFE/MAI(96)5] could provide for greater transparency of non-discriminatory incentives designed to favour technology transfers or technology-related activities and discourage an excessive use of these incentives while allowing legitimate ones. Finally, the MAI provisions on national security could ensure that this motivation is not used for protectionist purpose and limit exemptions relating to strategic technologies [see DAFPE/MAI/DG2(95)2].

### Questions

- a) *Is there a need for a specific provision in the MAI concerning technology research and development?*
- b) *If not, should technology policies be given special attention in the context of the national treatment/non-discrimination/MFN obligations and/or in the development of disciplines on performance requirements and investment incentives? Should these policies be given special treatment with respect to standstill, roll-back and the listing of country reservations?*
- c) *Should strategic technologies be given special attention in the context of the MAI exception on national security? If so how?*